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## **Military Spouses Residency Relief Act**

### *Guide for individual income tax and Montana residency*

On Veterans Day, Nov. 11, 2009, President Barack Obama signed the Military Spouses Residency Relief Act. The act contains a wide range of provisions related to voting, vehicle registration, and taxes.

The Montana Department of Revenue created this guide to address portions of the act in relation to individual income tax. Specifically, the act includes these two tax-related provisions:

- If a military service member and nonmilitary spouse are residents of the same state, the act allows the nonmilitary spouse to remain a resident of that state, even if the nonmilitary spouse moves to another state solely to be with the military spouse who is serving in compliance with military orders.
- If a nonmilitary spouse remains a resident of a state because he or she qualifies under the provision described above, only that state may tax the nonmilitary spouse's wages and other income derived from their services.

The information below highlights key points of the act in relation to Montana income taxes. A question-and-answer section highlights some common scenarios related to residency in Montana.

### **2009 refunds of withheld Montana taxes on wages**

Because the act is retroactively effective to the beginning of 2009, nonresident military spouses who were employed in Montana may be entitled to claim a refund of Montana taxes withheld from the wages they earned in Montana during 2009.

**Important:** To claim the 2009 refund the spouse must:

- File a 2009 Montana individual income tax return – [Form 2](#).
- Check filing status as “nonresident”
- Include with the return a copy of the service member's most current Leave and Earnings statement and the spouse's military ID card.
- Report the spouse's wage or personal service income as non-Montana source income on [Schedule IV, Nonresident/Part-Year Resident Tax](#).

If the service member and the nonmilitary spouse are both nonresidents, they may file jointly or separately – in either case the same procedure should be followed of categorizing the spouse's wage or personal service income as non-Montana source income.

## **Withholding exemption certificate**

Beginning in 2010, each nonresident military spouse employed in Montana must also complete an annual withholding exemption certificate to enable their employer to stop withholding Montana taxes from their wages. Form MSR – Employee Certificate of Status under the Military Spouses Residency Relief Act is available on our website at [revenue.mt.gov](http://revenue.mt.gov). The certificate is required because an employer who should, but does not, withhold wages, can be held personally liable for the tax. The withholding exemption certificate that the spouse completes will protect the employer from liability.

## **Questions and answers**

### **Scenario 1**

**My spouse is stationed at Malmstrom Air Force Base in Great Falls. I moved from Alabama to Montana in 2008 to be with him. In February 2009 I obtained a part-time job with a local retail store. I have not claimed Montana residency for any purpose, including in-state tuition or obtaining a resident hunting or fishing license.**

**(1a) Am I eligible for a refund of the Montana taxes that were withheld from my wages?**

Yes, as long as you did not claim Montana residency for another purpose, your wages are exempt from Montana individual income taxes and you may obtain a refund by filing a 2009 return. The only form for claiming the refund is Form 2.

**(1b) Does voting as a Montana resident in 2009 disqualify me from receiving a refund?**

No. Voting in an election in Montana before January 1, 2010 will not be considered evidence of an affirmative choice to become a Montana resident. Voting in Montana starting in 2010, however, will be considered as an election to become a Montana resident. This is because the Military Spouse Relief Act protects your right to continue to vote in your state of residence.

**(1c) Does obtaining a Montana drivers license disqualify me from receiving a refund?**

No. Obtaining a Montana drivers license will not, alone, be considered an affirmative choice to become a Montana resident. Montana law requires military spouses to obtain Montana driver's licenses no later than 45 days after becoming employed in Montana ([61-5-104, MCA](#)).

**(1d) I attended college and paid in-state tuition as a Montana resident. Is my 2009 wage income still exempt?**

No. You affirmatively elected to become a Montana resident by claiming a benefit available only to residents.

**(1e) I obtained a fishing license as a Montana resident. Is my 2009 wage income still exempt?**

No. You affirmatively elected to become a Montana resident by claiming a benefit available only to residents. Montana currently allows nonresident active service members in the state on orders (and dependents in the household) to be treated as a resident to obtain resident hunting, fishing, and trapping licenses without actually becoming a resident ([87-2-102, MCA](#)). That treatment is not currently extended to service members' spouses.

**Please note:** See the special residency rules section that starts on page 4.

**(1f) Our 15-year-old daughter, who lives with us in Great Falls, obtained a hunting license as a Montana resident. Does that affect whether my 2009 wages are exempt from Montana income tax?**

No. As noted above, the dependent of an active military service member who is present in Montana on orders is treated as a resident for the purpose of obtaining hunting, fishing, and trapping licenses. This special provision overrides the standard rule in Montana, set out in [1-1-215, MCA](#) (rules for determining residence) that a minor's legal residence is usually the same as the parents'.

**Please note:** See the special residency rules section that starts on page 4.

**(1g) If we named Wyoming, which has no income tax and where we have never lived, as the domicile of our family, could I avoid having any state tax the salary I earn in Montana?**

No. You cannot avoid state tax on your wages by simply naming a state that does not impose income tax as your "residence" or "domicile." The location of a person's domicile (in Montana, "residence") is a mixed question of fact and law. Your real domicile or residence retains the right to tax all of your income. If, for instance you took a leave of absence from your job in Alabama to move to Montana while your spouse was stationed here and you expect to return to Alabama when your spouse's military service in Montana ends, then Alabama is almost certainly your domicile. Alabama, as your state of domicile, retains the right to tax your income and you should continue to file Alabama income tax returns as an Alabama resident.

## **Scenario 2**

**My spouse and I were both born in Montana and lived here until she entered active duty from Montana. When she was stationed in Hawaii I moved there, temporarily, with our children to be with her. I am employed in Hawaii.**

**(2a) Are my Hawaiian wages exempt from Montana tax under the Military Spouses Residency Relief Act?**

No. Under the American Recovery and Reinvestment Act, it is only your state of residence that may tax your wages. As a nonmilitary spouse, who retains your Montana residence while you are in Hawaii with your military spouse, you should file a Montana tax return as a resident. Montana has a special law ([15-30-2117, MCA](#)) that probably exempts your spouse's military salary from Montana income tax and nothing about the Military Spouses Residency Relief Act changes that. Section [15-30-2117\(2\), MCA](#), provides that the salary received from the armed forces is exempt from state income tax for residents of Montana who are serving on active duty in the regular armed forces and who entered into active duty from Montana.

**(2b) Is the answer different if I choose to become a Hawaiian resident?**

Part of the answer changes. If you choose to become a Hawaiian resident, you would not file a Montana income tax return as a resident. If you had Montana source income and were required to file a Montana income tax return as a nonresident, the Hawaiian salary would not be considered Montana source income. If your wife retains her Montana residence, her military salary would continue to be exempt under [15-30-2117, MCA](#). If she also changed her residence to Hawaii, the military salary would be non-Montana source income in all events and not subject to Montana income tax.

### **Scenario 3**

**I am currently eligible for the Military Spouses Residency Relief Act. Are there any events that would make me lose my eligibility?**

Yes. There are several situations to consider.

- Military service member leaves the service.
- Divorce.
- Physical separation due to duty changes where the service member's orders move the service member outside the state and the spouse *is allowed* to join him, but chooses not to.
- If you clearly establish residency in another state through actions such as accepting in-state tuition, filing a court action, or applying for state benefits available only to residents.

**Please note:** When the service member is deployed to a location where the spouse is *not allowed* to follow, such as a war zone, the spouse does not lose eligibility.

### **Determining Montana residency**

Montana law uses the term "residence" rather than "domicile" when describing the rules for determining whether individuals are Montana residents or are nonresidents.

Section [1-1-215, MCA](#) defines residence as follows:

*Every person has, in law, a residence. In determining the place of residence, the following rules are to be observed:*

*(1) It is the place where a person remains when not called elsewhere for labor or other special or temporary purpose and to which the person returns in seasons of repose.*

*(2) There may be only one residence. If a person claims a residence within Montana for any purpose, then that location is the person's residence for all purposes unless there is a specific statutory exception.*

*(3) A residence cannot be lost until another is gained.*

*(4) - (6) [residence of a minor].*

*(7) The residence can be changed only by the union of act and intent.*

### **Special residency rules for obtaining Montana hunting, fishing, and trapping licenses**

Special rules allow some nonresident military service members and dependents to be treated as residents to obtain coveted Montana hunting, fishing, and trapping licenses. While nothing in the Military Spouses Residency Relief Act affects these special privileges, they do have their own limits and qualifications, which are different and may cause confusion. One difference is that nonmilitary, nonresident spouses do not qualify as residents to obtain the resident licenses.

Section [87-2-102\(1\)](#), MCA, describes who is treated as a resident to obtain a hunting, fishing, or trapping license:

*(1) (a) A member of the regular armed forces of the United States, a member's dependent, as defined in 15-30-2115, who resides in the member's Montana household, or a member of the armed forces of a foreign government attached to the regular armed forces of the United States is considered a resident for the purposes of this chapter if:*

*(i) the member was a resident of Montana under the provisions of subsection (4) at the time the member entered the armed forces and continues to meet the residency criteria of subsections (4)(b) through (4)(e); or*

*(ii) the member is currently stationed in and assigned to active duty in Montana, has resided in Montana for at least 30 days, and presents official assignment orders and proof of completion of a hunter safety course approved by the department, as provided in [87-2-105](#), or a certificate verifying the successful completion of a hunter safety course in any state or province. The 30-day residence requirement is waived in time of war. Reassignment to another state, United States territory, or country terminates Montana residency for purposes of this section, except that a reassigned member continues to qualify as a resident if the member's spouse and dependents continue to physically reside in Montana and the member continues to meet the residency criteria of subsections (4)(b) through (4)(e). The designation of Montana by a member of the regular armed forces as a "home of record" or "home of residence" in that member's armed forces records does not determine the member's residency for purposes of this section.*

*(b) A member of the regular armed forces of the United States who is otherwise considered a Montana resident pursuant to subsection (1)(a)(i) does not forfeit that status as a resident because the member, by virtue of that membership, also possesses, has applied for, or has received resident hunting, fishing, or trapping privileges in another state or country.*

*(2)-(3) . . .*

*(4) In addition to the requirements of subsection (2) or (3), a person shall meet the following criteria to be considered a resident for purposes of this section:*

*(a) the person's principal or primary home or place of abode is in Montana;*

*(b) the person files Montana state income tax returns as a resident if required to file;*

*(c) the person licenses and titles in Montana as required by law any vehicles that the person owns and operates in Montana;*

*(d) except as provided in subsection (1)(b), the person does not possess or apply for any resident hunting, fishing, or trapping licenses from another state or country or exercise resident hunting, fishing, or trapping privileges in another state or country; and*

*(e) if the person registers to vote, the person registers only in Montana.*

## **Do you have questions?**

Please call us toll-free at (866) 859-2254 (in Helena, 444-6900).